

Case C-276/09

Everything Everywhere Ltd, T-Mobile (UK) Ltd

Reference

Commissioners for Her Majesty's Revenue and Customs

[Court of Justice (England & Wales), Chancery Division,

Case C-276/09]

«The Commission – the Commission – 13, B, the Commission 1 3 –
the Commission – the Commission – the Commission – the Commission –
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the Commission – the Commission – the Commission – the Commission –
the Commission – the Commission – the Commission – the Commission –
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the Commission

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the Commission – the Commission – the Commission – the Commission –
the Commission – the Commission – the Commission – the Commission –

(Case 77/388, the Commission 2, the Commission 1, 13, B, the Commission 1 3)

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(the Commission 25, 27, 32 the Commission).

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??? 2?? ????????????? 2010 (*)

«???? ??????? ???? – ????????????? – ?????? 13, B, ????????? ??, ?????? 1 ??? 3 –
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????????? ?? High Court of Justice (England & Wales), Chancery Division (????????? ??????????), ??
????????? ??? 8?? ?????????? 2009, ? ?????? ?????????? ??? ?????????????? ????? 20 ????????? 2009,
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Everything Everywhere Ltd, ????? T-Mobile (UK) Ltd,

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Commissioners for Her Majesty's Revenue and Customs,

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????????????? ??? ????? K. Lenaerts, ?????????? ??????????, R. Silva de Lapuerta, ?. ??????, J.
Malenovský ??? T. von Danwitz (?????????), ?????????,

????????? ??????????????: P. Cruz Villalón

?????????????: L. Hewlett, ?????? ??????????? ?????????????,

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30?? ?????????????? 2010,

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– ? Everything Everywhere Ltd, ????? T-Mobile (UK) Ltd, ?????????????????? ??? ????? J.
Peacock, QC, ??? M. Angiolini, barrister,

– ? ?????????? ??? ?????????? ??????????, ?????????????????? ??? ??? H. Walker,
????????????????? ??? ??? R. Hill, barrister,

– ? ?????????? ??????????, ?????????????????? ??? ????? ?. ??????????, ?. ????????? ?????? ???
?? ?. ?????,

– ? ?????????, ?????????????????? ??? ??? D. O'Hagan, ?????????????????? ??? ??? B. Doherty,
barrister,

– ? ?????????? ?????????, ?????????????????? ??? ????? R. Lyal ??? M. Afonso,

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1 ? ?????? ????????? ?????????????? ?????????? ?????? ??? ?????????? ??? ?????? 13, B, ?????????? ??, ?????? 1 ??? 3, ??? ?????? ????????? 77/388/??? ??? ?????????????, ??? 17?? ?????? 1977, ???? ?????????????? ??? ?????????????? ??? ?????? ??????, ??? ?????????? ?? ?????? ?????? ??????? ?????????? – ?????? ?????????? ?????? ?????????????????? ??????: ?????????????? ?????????????? ???? (?? L 145, ? 1, ??? ?????: ???? ??????), ??? ?????????????? ??? ?????????????????? ??? ?????? ?????????????????? ?????? (??? ?????: ???), ??????? ??????, ? ?????????????????? ?????????????? ?????? ??? ?? ?????????? ?? ?????? ?????????? ?????????? ? ?????????????? ?????????????? ??????.

2 H ?????? ?????? ?????????????? ??? ?????????? ?????????? ??????? Everything Everywhere Ltd, ?????? T-Mobile (UK) Ltd (??? ?????: Everything Everywhere), ??? Commissioners for Her Majesty's Revenue and Customs (????????????? ??? ?????????????????? ??????, ??? ?????: Commissioners) ?????????? ?? ?? ?????????????????, ?????? ?????? ??? ???, ??? ?????????? ??? ?????????? ? Everything Everywhere ?????? ?????????? ??? ?????? ?????? ?????????????? ?????????????? ?????????? ?????????????? ??? ?????????? ?????????????????? ??????.

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3 ?????? ?? ?????? 2, ??????? 1, ??? ?????? ?????????, ?????????????? ?????? ??? «?? ?????????????? ?????????? ??? ?? ?????????? ??????????????, ??? ?????????????????????????????? ?? ?????????? ?????????? ??? ?????????????? ??? ?????? ??? ?????????????????? ??? ?????, ??? ?????????? ??? ??? ?????????? ??? ??????».

4 ?? ?????? 13, B, ??? ?????? ?????????, ?? ?????? «????????? ?????????????», ?????????????? ?? ?????:

«?? ??? ?????????????? ?????? ?????????????? ?????????????, ?? ?????? ?????? ??????????????, ??? ??? ?????????????????? ??? ?????????, ?????? ?? ?????????????????? ? ?????? ??? ?????? ?????????? ??? ?????????????????? ?????????? ?????????????? ??? ?? ?????????????????? ?????????????? ??????????????, ?????????????????? ??? ?????????????:

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1. ?? ?????????????? ??? ?? ?????????????????????? ?????????????, ?????? ??? ?? ?????????????????? ?????????????? ?????????????????? ??? ?????????? ? ?????????? ??? ?????????????.

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3. ??? ??????????, ?????????????????????? ??? ??? ??????????????????????, ?? ?????????? ?????????? ??????????????, ?????????????????? ??????????????????, ??????????, ?????????????? ??? ?????????????, ??????????????, ?????????????? ??? ?????? ??????????????, ?????????????? ??? ?????????????? ??????????????

[...]».

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5 ? ?????????????????? ??? ?????? ?????????????? ?? ?????? 13, B, ?????????? ??, ??????? 1 ??? 3, ??? ?????? ?????????? ?????????????????? ?????? ?????????? ?????? ??? ?????????? ?????????????? ?? ??? ?????????? 5, ??????? 1 ??? 5, ??? ?????????????????? 9 ??? ?????? ??? 1994 ?????? ??? ??? (Value

Added Tax Act 1994), ??? ?????????? ??? ??? ???:

«1. ??? ?????????, ?? ???????? ? ??? ????????? ?????????, ?????????? ?????? ? ?????? ??????????, ?????? ??? ?????????????? ???? ????????? ??????.

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5. ??? ?????? ???????????? ?????????? ?? ?????? ?? ?????? ?? ??? ?????????????????? ??? ??????? 1, 2, 3, 4 ? 6 (????????????? ??? ?? ? ?????? ???? ???????????????? ??????) ??? ??????? ??? ????????? ??? ??? ?????????? ??? ??????????????».

6 ?? ????????????? 5 ??? 5B ??? ????????? 5 ??? ????????????? 9 ??? ?????? ??? 1994 ???? ??? ??? ????????? ?? ?????:

«(5) ??? ???? ????????? ?????????? ??? ????????? 5, ?? “????????????? ??????????” ?????????? ?? ?????????? ?? ??? ??????? ?????????????????? ? ??????, ?? ?????? ??? ??????? ?????????????????????? ???????????

a) ?????????? ??? ??????? ? ?????????? ?? ??????? ?? ???? ??????????????? ?????????????????????? ??????????, ???

b) ?????????? ??? ?????????? ?????????? ?????????????????????? ??????????

????? ?? (????? ?????????????? ?????????????????????? ?????????? ??? ?????????? ??? ??????? 1, 2, 3 ? 4) ??? ?????????? ?????????????????????? ?????????? ???? ??????? ?????????? ??? ??? ??????? ?????????????????????? ??????????, ?? ?????????????????????? ???? ??? ?????????? ?????????? ?????????? ???????, ?????????????? ??????????, ??????????????, ?????????????? ?????????? ? ?????????????? ?????????????? ? ??? ?????????, ?????????????????? ??? ?????????? ?????????????? ?????????? ?? ?????????? ??????????????????.

(5A) ??? ???? ?????????? ?????????? ??? ????????? 5, ??? ????????? “????????? ?? ??????????????” ??????? ?????????????????? ?? ??????????????, ? ?? ???? ??? ?????????????????? ??????????????, ???????

a) ?????????? ??? ?????????? ?????????????????????? ??????????, ???

b) ?????????? ??? ?????? ? ??????? ?? ?????? ?? ??? ?????????????? ?????????? ??????????,

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(5B) ??? ???? ?????????? ?????????? ??? ????????? 5 ??? 5A ?? “????????????????????? ??????????” ?????????? ?? ?????????? ?? ??? ??????? ?????????? ?????? ?????????????? ??? ??????? 1, 2, 3, 4 ? 6.»

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7 ? Everything Everywhere ?????? ?????????????? ??? ?????? ??? ?????????????????? ?????????? ?????????? ?????????? ?????????? ??????? ??? ?????????? ?????? ?? ?????????? ?????????? ?? ?????????????????? ?? ?????????????? ??????, ?????????????? ??? ?????????????? ??? ?????????????? , ? ?????????????????? ??? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??????????????. ???? ?????????????? ?????? ? Everything Everywhere ?????????????? ?????? ?????????? ??? ?????????? ?????????????? ??? ?????? ?????? ?????????? ?? ?????????????? ?? ?????????????? ??????????. ????, ?? ?????????? ?????? ?? ?????????????? ?????????????? ??? ??????????????.

– ?? «????? ??????» ????? ??? ?????? ??????.

– ?? ?????? ??? ??? Bankers' Automated Clearing System [????????????? ?????????????????? ?????????? ?????????????? (BACS)] (?? ???? : ?????? BACS).

– ?? ?????? ?? ?????????? ? ?????????? ?????, ??? ?????????? ? ??????????.

– ?? ?????? ??? ?????? ?????????????? ??? ?????????, ??? ?????????? ?? ?????? ?????????????? ????????? (Post Office).

– ?? ?????? ?????????????? ?????????????, ?

– ?? ?????? ?????????????????? ??? ??? ?????????? ??? Everything Everywhere, ??? ??? HSBC Bank Plc, ??? ?????? ?????????, ?? ?????? ??? ?????????????? ??? Everything Everywhere.

8 ??? ? ?????? ?????? ??? ?????????? ??? ?? ? ?????? ??? «????? ??????» ? ? ?????? BACS, ? Everything Everywhere ??? ??? ?????? ?? ?????????? ??????????.

9 ? ?????? ?? ? ?????? ??? «????? ??????» ?????????? «????? ?????? ??????» , ?????? ?????? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? Everything Everywhere. ??? ?????? ??? ?????? ?????, ? ?????????? ?????????????? ?? ?????, ??? ?????? ?????????? ?????, ??? ??? ???? ??????, ??? ??? BACS, ?? ?????????? ??? ?????????????? ??? ??? ?????? ?????. ?? ?????? BACS ??????????????????, ????, ???, ?? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ?????????? ??? ?????????????? ????? ??? ??? ?????????????? ??? ???? ??? Everything Everywhere.

10 ?????????, ??? ?????? ??? ?????????????????? ?? ??? ??? ??? ?????? ?????? ??? ?????????????? ??? ????? 7 ??? ?????????? ?????????? ?????????????, ??? ?????? ???, ?? ?????????? ??? 3 ?????? ?????? (GBP), ?? ????? ? Everything Everywhere ?????? «Separate Payment Handling Charge» («????? ?????????????? ?????????? ?????????», ??? ???? : SPHC).

11 ???, ?? SPHC ?????????? ??? ?????? ??? ?????? ?? ?????????? ? ?? ?????????? ?????, ?????????? ?? ?????, ?????????????? ? ??? ?????????????, ??? ?????????????? ?????????? ??? ??? ? ?????????? ?? ?????????? ?????? ??? ??? ?????????? ??? ?????? ?????????? ?????????????? ??? Everything Everywhere. ?? ??? ?????? ??? ???? ?????????? ??? ?????????? ?? ??????, ??? ???? ?????? ?????????? ????? ??? ?????? ?????????????? ????, ?????? ?????? ?????? ?????????? ??? Everything Everywhere ?????? ?????? ?????????????? ??? ?????? ?????????? ??? ?????????? ??? ? Everything Everywhere ?????? ?????? ?? SPHC ?????? ?????? ??? ?????????? ??? ?????????? ?????????? ?????????????? ?? ??????, ??? ?????? ?????????????? ??? ?????????? ?? ?????? ?????????? ??? ?????????? ?????? ?????? ??? ?????????????? ?????? ?????? ??? ?????????? ?????? ? ?????? ??????????.

12 ?? ????? SPHC ?????????????? ?????? ?????????? ?????? ??? ?????????? ? Everything Everywhere. ?? ?????? ??? ?????????????? ??? ?????????? ??? Everything Everywhere ??? ?????????? ??? ?????????? ???, ?????? ??? ?????? ?????????????? ??? ??? ??????????. ?????? ?? 28 % ??? ?????????? ??? Everything Everywhere ?????????? ??? ?????? ?????????????? ????? ??? ?????????????? «????? ??????» ? ??? ?????????????? BACS ???, ??? ?????????, ?????????????? ?? SPHC.

13 ?? SPHC ??? ?????????????? ?????? ?????? ?????????? ??? ?????????? ?? ??? ?????????? ???

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14 ? Everything Everywhere ?????? ??? ?? SPHC ?????? ?? ?????????? ?? ?????????????? ???
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??? ?????????? ??? 2005 ? Everything Everywhere ?????????? ?????????? ?????????? ?????? 4 063
228,08 GBP, ??? ?????????????? ?????? ?????? ?? ?????? ?????????????????? ?????? ??????? ??? ??? SPHC
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????????????? ?????????? ??? VAT and Duties Tribunal, ??? ?????????????????? ??? ?????????? ???
Commissioners ?????????????? ??? ?? SPHC ?????????????? ?? ???.

15 ? Everything Everywhere ?????????? ?????? ?????? ??? ?????????????? ??? VAT and Duties Tribunal
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SPHC ?????????? ?????????????? ?????????? ??? ?????????? ?????????????? ?????????????????? ??? ??? ?????????
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????????????? ??, ??????? 1 ? 3, ??? ?????? ??????????

16 ?? ?????????? ?????????????? ?????????????? ?????? ??? ?? ?????????? ??? ?????????? ??????
????????????????? ??? ?? ?????? 13, B, ?????????? ??, ??????? 3, ??? ?????? ?????????? ?????? ???
????????????????? ??? ?? ?????????????????? ?? ??? ?????????? ??? 5?? ?????????? 1997, C-2/95, SDC (?????????
1997, ? I-3017), ?????????????? ?? ??? ?????????? 53 ??? 66 ??? ?????????????? ??????, ?????? ??
????????????????? ?????????? ???, ?????????? ?? «??? ?????????? ? ?????? ?????? ?????????????? ???
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17 ?????????????? ??? ? ?????????? ??? ?????????? ??? ?????????? ?????? ?????????????? ??? ???
????????????? ??? ?????????? ??? ?????????????????? ?????????, ?? High Court of Justice (England & Wales),
Chancery Division, ?????????????? ?? ?????????????????? ?? ?????????????????? ??? ?? ?????????????? ???
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«1) ?????? ?????? ?? ?????????????????????? ??? ?????????????????????? ??? ??? ??? ??????????????, ? ??????
????? “?? ?????????????????? ?? ?????????????? ?????????????? ??? [?????????????????] ?????????? ??? ?????????????????
?????????????”; ??????????????.

?) ??????? ? ?????????? ??? ?????????? ?? ???????, ??????, ??? ?? ???? ?????????????? ??
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????????????? ??????? ??? ?????????????? (i) ??? (ii);

?) ??????? ? ?????????? ??? ?????????? ?? ?????????????????????? ?? ??????? ??? ??? ??????????????
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2) ?????????? ? ?????????????????? ??? ?????????????? ?? ?????? 13, B, ?????????? ??, [??????] 3, ???
?????? ?????????? ??? “?????????? ?? ??????? ?????????? ?????????? [?] ??????????” ??? ?????????????
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??????, ?????? ?? ?????????????? ??? ??????? ?????????? ? ?????????????????????? ?????? ?????????? ??????????
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3) ?????????? ? ?????????? ?? ????????? ?????????? ?? ?? ?? ? ?????????????????? ?????? ? ?????? ?? ?????????? ?? ?????????? ?? ?????????????? ?? ?? ?????????? ?????????? ?? ?????????? ?????????? ?? ?????????? ?????????? ? ?? ?? ?????????? ?????????? ?? ?????????? ?? ?? ?????????? ?? ?????????? ?????????????;

4) ?????????? ? ?????????????????? ?? ?????????? ?? ?????? 13, B, ?????????? ??, [??????] 1, ??? ?????? ?????????? ?? “????????????????? ??????????” ?????????? ?? ?? ?????? ?? ?????????? ? ?????????????????? ?? ?? ?????????? ?????????? ?? ?? ?????? ?????????? ?????? ?????????????? ??????, ????, ???? ?? ?????????? ?? ?????????? ??????, ? ?????????????? ?? ?????????????? ?????? ?? ??????? ?????????????? ?? ?? ?????????? ??????

5) ?????? ? ?????????????????? ?? ?????????????? ?? “????????? ?? ?????? ?????????? ?????????? [?] ?????????? [????????????? ??????” ?????????????? ?? ?????????? ?????????????? ?????????? ?? ?????????????????? ?????????? ?? ?????????????????????????????? ?? ?? ??????, ???? ?????? ?? ?????????? ? ?????????????????????? ?? ?? ?????????????????? ?? ?? ?????????????????? PayPoint ???? ?????????? ?????????;

6) ?????? ? ?????????????????? ?? ?????????????? ?? “????????? ?? ?????? ?????????? ?????????? [?] ??????????” ?????????????? ?? ?????????? ?????????????? ?????????? ?? ?????????????????? ?????????? ?? ?????????????????????????????? ?? ?????????? ?????????????????????? ?? ?? ?????????????????? ? ???? ?????????????? ??, ???? ?? ?????????? ?????? ?????? ?? ?????? ?????????????? ?????????????????? ?? ?? ?????????????????????? ?? ?? ?????????? ??;

7) ?????? ? ?????????????????? ?? ?????????????? ?? “????????? ?? ?????? ?????????? ?????????? [?] ??????????” ?????????????? ?? ??????????, ???? ?????? ?? ?????????? ? ?????????????????????? ???? ?????????? ?????????, ?????????????? ?????????? ?? ?????????????????? ?????????? ?? ?????????????????????????????? ?? ?????? ?????????? ?? ?? ?????????? ?? ?????????????? ?????????????????? ?? ?????????????????????? ?? ?? ?????????????????? ?????????????;

8) ??? ?????????????? ?????????? ?????? ?? ?????????? ?????? ?????????????? ?? ?????? ?? ?????????? [????????????? ?? ???] ?????????? ?????????? ?? ???? ?????????? ?????????????? ?? ?? ?? ?????? (????? ?? ?????? ?????????????????? ?????????????? ?????????? ?? ?? ?????? ?????????) ?? ?????????????? ?????????????????????? ?????????? ?? ?????????? ?? ?????????? ?? ?? ?????????????????? ?????? ?? ?????????? ? ?????? ?????????? ?? ?? ?????????? ?? ??????????????????, ???? ? ?????? ?????? ?????????????? ?????? ?? ?????? ?? ?????????? ?????????????? ?? ?????????????????? ?????????? ?????? ?????????????????? ?????????????????? ?? ?????????;

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18 ?? ?? ?????????? ?? ?? ?????? ?????????????? ?????, ???' ??????, ??????, ?? ?? SPHC ?????????? ?? ?????????????? ?????? ?? ?????????? ?????????? ?? ?????? ?? Everything Everywhere ?????? ?????????? ??, ?????????????? ?????? ?????????????? ?????????? ?? ?? ?? ?? ?????????????? ?? ?????? 13, B, ?????????? ??, ?????? 1, ?? ?????? ?????????? (????????? ??????????) ? ?? ?? ?????? ?????? 13, B, ?????????? ??, ?????? 3 (????? ?? ?????? ?? ?????????? ??????????) ??, ??????????, ?? ? ?? ?????? ?????? ?????????????????? ?? ?? ?????? ?????????????? ?????????? ?????????????? (????? ?????????).

19 ?????????? ??, ?? ?? ?????????????? ?? ?????? ?????? ?????????????? ?????????????? ?? ?? ?????????? ?????????????? ?????????? ?? SPHC ?? ?????????????? ?????? ?? ?????????????? ?????????????????? ?? ?? ?????? ?? ?????????????????? ?? ?? ?????????????? ?????? ?????????????? (?. , ??'

?????????? ??? ?????????????? ??? ?????????? ????. ??? ?????????? ??? ??????, ? ??????
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????????????? ?????????? ??? ?????????????????? ?????? ?????? ??? ?????????????? ??? ?????? ?????? ??????
?? ?????????????, ?????? ?????? ??? ?????????? ??? ???, ?? ?????????????????? ?????????? ?????? ???
????????? ??? ?? ?????? ?????????????? ?????????????????????? (??., ???' ??????????, ?????????? ??? 22??
????????????? 1998, C-308/96 ??? C-94/97, Madgett ??? Baldwin, ?????????? 1998, ?. I-6229,
????????? 24 ??? 25).

31 ?? ?? ??? ?????????????? ??? ?????????? ? ?????????? ??? ?????? ?????????? ??? ??? ?????? ???
????????????????? ?????????????????????, ??? ?????????????????? ?? ?????????????????? ??????????????????, ??? ??????????
???, ?????????????? ???, ??????????, ?????????????????????? ?????????? ?????? ?????????????? (??., ??????,
????????????? ??? 6?? ?????? 2010, C-94/09, ?????????? ?????? ??????????, ??? ??? ?????? ??????????????????
?????? ??? ??????????, ?????? 40, ??? ??? 10?? ?????????? 2010, C-58/09, Leo-Libera, ??? ??? ??????
????????????????? ?????? ??? ??????????, ?????? 34), ?????????????? ??? ? ?????????????? ??? Everything
Everywhere ?????? ?????????? ?????????????????? ??? ?????????? ?????????????????????? ?????????????????? ??????
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32 ?????? ??????????, ??? ?????? ?????????? ?????????? ?? ?????? ? ?????????????? ???, ?????? ?????? ???
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33 ?????????????????? ?????? ??? ?????????????????? ??? ?????????? ??? ?????? ??????????, ?????????????? ?
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34 ?????????????? ??? ? ?????????? ?????????????????? ?????? ?? ?????? ?????? ?????????????? ??? ?????????? ??????
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????????????? ?????????? ?????? ??? Bankers' Automated Clearing System, ?????? ?? ??????????????
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* ?????? ???????????? : ? ???????.